

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Shevani Patel	Team: Squad #3	CCRB Case #: 201502977	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 04/04/2015 1:23 AM	Location of Incident: 1146 Ward Avenue	Precinct: 43	18 Mo. SOL 10/4/2016	EO SOL 10/4/2016	
Date/Time CV Reported Sat, 04/04/2015 7:29 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/20/2015 1:54 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Gregory Kennedy	26842	948364	043 PCT
2. POM Eric Healy	11799	947069	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Gregory Kennedy	Abuse: PO Gregory Kennedy stopped § 87(2)(b)	
B.POM Gregory Kennedy	Force: PO Gregory Kennedy used physical force against § 87(2)(b)	
C.POM Eric Healy	Force: PO Eric Healy used physical force against § 87(2)(b)	

Case Summary

On April 4, 2015, Sgt. Amaury Rivera of the 43rd Precinct filed this complaint over the phone with IAB on behalf of § 87(2)(b). IAB generated log-number 15-9863 and referred the case to the CCRB on April 20, 2015 (Board Review 01).

On April 4, 2015, § 87(2)(b) was walking on Boynton Avenue towards Watson Avenue in the Bronx with two unidentified men. As they were walking, § 87(2)(b) saw PO Gregory Kennedy of the 43rd Precinct, who he did not realize was an officer, standing between two cars on the same side of the street. Fearing robbery or assault, § 87(2)(b) ran. PO Kennedy ran after him (**Allegation A**). When PO Kennedy said, "Police," § 87(2)(b) realized he was an officer. § 87(2)(b) stopped on the sidewalk by 1114 Ward Avenue, which was about a block and a half from where he first saw PO Kennedy. § 87(2)(b) got down on his knees with his torso upright and placed his hands on his head. PO Kennedy came up behind § 87(2)(b) pulled his right arm behind him and placed the handcuff on it. PO Kennedy told him to lie down on the ground. § 87(2)(b) laid his torso down so his entire body was resting flat. PO Kennedy kneeled down and handcuffed him. PO Kennedy then allegedly punched § 87(2)(b) left eye at least three times in a row (**Allegation B**). After the third punch, § 87(2)(b) went in and out of consciousness. § 87(2)(b) heard a car pull up. PO Eric Healy of the 43rd Precinct approached. § 87(2)(b)'s legs, which were flat on the ground, were spread out. PO Healy allegedly punched § 87(2)(b)'s testicles from in between his legs (**Allegation C**). § 87(2)(b) was charged with § 87(2)(b) (Board Review 02 and 03).

There is no video associated with this case.

This case is over 90 days old. § 87(2)(b) was incarcerated when the undersigned received the case. On April 30, 2015, investigators visited § 87(2)(b) at § 87(2)(b) after receiving consent from his attorney. He refused to provide a statement and agreed to contact the CCRB should he change his mind. On May 14, 2015, the case was closed as "complainant uncooperative." On June 24, 2015, § 87(2)(b) sent a letter to re-open the case. His attorney required that she be present and was unable to schedule a sworn statement until July 14, 2015. PO Healy and PO Kennedy did not appear to their first scheduled interview on July 29, 2015 because of a court appearance. PO Healy was interviewed on August 7, 2015. PO Kennedy was out line-of-duty injury for two months. The undersigned received interview clearance from the medical division, but his command's roll call and ICO were unable to reach PO Kennedy to notify him for four scheduled interviews. PO Kennedy was interviewed on October 15, 2015 when he returned to duty.

Mediation, Civil and Conviction Histories

- This case was unsuitable for mediation because of an IAB investigation, a civilian injury and an arrest.
- As of August 25, 2015, no Notice of Claim with regard to this incident had been filed with the City of New York.

• § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) (Board Review 05).

- PO Kennedy has been a member of the NYPD for six years and has had six prior CCRB cases involving 16 allegations with two substantiated allegations. In case number 201403575, a retaliatory summons and stop allegation were substantiated against him. The NYPD imposed Command Discipline A.
- PO Healy has been a member of the NYPD for seven years and has had six prior CCRB cases involving 13 allegations with two substantiated allegations. In case number 201403575, a frisk and stop allegation were substantiated against him. The NYPD imposed no disciplinary action for the stop, and Command Discipline A for the frisk.

Potential Issues

- § 87(2)(b) refused to provide contact information for the two men he was with when he was stopped by the officers. These two men were not stopped by officers nor were they witnesses to the apprehension. Without their information, the undersigned could not contact them.

Findings and Recommendations

Allegation A –Abuse of Authority: PO Gregory Kennedy stopped § 87(2)(b)

On July 14, 2015, § 87(2)(b) was interviewed at the CCRB (Board Review 06). § 87(2)(b) was leaving his mother's residence, when he ran into two unidentified men who were walking in the same direction. As they were walking, § 87(2)(b) saw PO Gregory Kennedy of the 43rd Precinct, who he did not realize was an officer, standing between two cars on the same side of the street. Fearing robbery or assault because there had been a shooting and several robberies in the neighborhood a few days prior and because he was wearing jewelry, § 87(2)(b) ran. About a block and a half later when PO Kennedy said, "Police," § 87(2)(b) realized he was an officer and stopped on his own. During his interview, § 87(2)(b) was asked if he was carrying a firearm during the incident, and his attorney refused to allow him to answer.

On October 15, 2015, PO Kennedy was interviewed at the CCRB (Board Review 07). PO Kennedy and PO Healy were conducting routine patrol. PO Kennedy and PO Healy heard shots (not a radio run). They spoke with the other anti-crime unit over the radio. These officers told PO Kennedy and PO Healy to head to the vicinity of Watson Avenue between Statford Avenue and Boynton Avenue. PO Kennedy estimated the distance to that location to be about a mile and a half away, but a check of the NYCMap on the CityShare website showed it to be approximately .6 miles away. PO Kennedy never heard any radio runs regarding shots fired or any corresponding 911 calls.

PO Kennedy and PO Healy drove over and canvassed the area. They asked about five different people (each person they saw) on the street if they heard shots fired. Each person confirmed hearing shots, but all pointed in different directions. In the vicinity of Boynton Avenue and Watson Avenue, PO Kennedy saw § 87(2)(b) walking northbound with two other men. PO Kennedy parked. The officers exited the car and waited for the group to approach the corner. PO Kennedy's intention at this point was to find out if they heard the shots fired.

PO Kennedy and PO Healy, who were standing in the street, identified themselves and asked if they could speak with them for a second. The officers were ignored. § 87(2)(b) did not stop walking. PO Kennedy asked a second time as he was about 10 feet from him. § 87(2)(b) ran. The officers did not get the opportunity to ask any of them if they heard the shots fired. As soon

as § 87(2)(b) took off running, PO Kennedy approached him. When asked why he ran after § 87(2)(b) PO Kennedy said, “He took off running after we asked him twice to speak with him. He’s running from where he believed shots were just fired.” As soon as he started running, § 87(2)(b) reached into his waistband with his right hand. When asked if he suspected § 87(2)(b) to have a firearm prior to him doing this, PO Kennedy stated that he suspected anyone to be carrying a firearm. PO Kennedy did not observe any bulge on § 87(2)(b) PO Kennedy explained that the officers approached § 87(2)(b) to speak with him, and once he began running, his level of suspicion became elevated, and immediately thereafter, § 87(2)(b) reached for his waistband. This occurred in a matter of seconds. § 87(2)(b) removed a firearm and dropped it to the sidewalk about two or three car lengths from where he started to run. PO Healy picked up the firearm and did not pursue § 87(2)(b) PO Kennedy continued to follow § 87(2)(b) for about a block and a half, telling him to stop.

PO Healy was interviewed at the CCRB on August 7, 2015 (Board Review 08). § 87(2)(g) The officers were a few blocks away from where they believed the shots came from. They saw § 87(2)(b) less than five minutes after first hearing the shots and about a block away from where he believed the shots fired to have come from. After the officers identified themselves, § 87(2)(b) looked into PO Healy’s eyes and said, “Oh shit,” before running.

An officer may stop an individual when he reasonably suspects that the person has committed, is committing, or is about to commit a crime. People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 09). Police pursuit of a person must be justified by reasonable suspicion that a crime has been, is being, or is about to be committed. A person’s flight in response to an approach by the police, combined with other specific circumstances indicating that the person may be engaged in criminal activity could provide the predicate necessary to justify pursuit. People v. Holmes, 81 N.Y.2d 1056 (Board Review 10). A person breaking away from a group and running from police officers with one hand pinned to his waist moments after officers heard gunshots in the area is sufficient to give rise to a reasonable suspicion that the person was engaged in criminal activity. People v. Buie, 89 A.D.3d 748 (2nd Dept., 2011) (Board Review 11).

§ 87(2)(g)

Allegation B –Force: PO Gregory Kennedy used physical force against § 87(2)(b)

Allegation C –Force: PO Eric Healy used physical force against § 87(2)(b)

§ 87(2)(b) stated that he got down on his knees with his torso upright and placed his hands on his head before PO Kennedy made contact with him. He handcuffed his right arm and told him to lie down. § 87(2)(b) lied down with the right side of his face against the ground. PO Kennedy handcuffed his left arm. § 87(2)(b) allowed PO Kennedy to take both of his arms, offering no resistance. Neither of his arms was ever underneath him. After he was handcuffed, he remained flat on the ground. PO Kennedy punched § 87(2)(b) s left eye at least three times in a row. After the third punch, § 87(2)(b) went in and out of consciousness. He stated that it was possible that he may have been punched further times, but he did not know. § 87(2)(b) heard a car pull up. PO Healy got out and approached. § 87(2)(b) s legs were spread. PO Healy

punched § 87(2)(b)'s testicles. After one punch, § 87(2)(b) passed out. The officers lifted § 87(2)(b) up. He regained his consciousness.

§ 87(2)(b)'s medical records from § 87(2)(b) note that he had a two centimeter abrasion under his left eye, a three centimeter thin laceration through his left eyebrow, swelling around this laceration and contusions to his left eyebrow. He refused stitches, and received liquid adhesive on the laceration. § 87(2)(b) stated that an officer threw him to the ground and kicked him in his face. He complained of pain to his face and left rib (Privileged Documents). The Pre-Arrest Screening Form notes that § 87(2)(b) had stitches and swelling to his left eye (Privileged Documents).

According to PO Kennedy, § 87(2)(b) jumped on the ground on his stomach in what appeared to PO Kennedy as an attempt to slide under a parked van. PO Kennedy made no physical contact with § 87(2)(b) before he went down. He could not see if § 87(2)(b)'s face made contact with the ground. PO Kennedy stopped short and fell on top of § 87(2)(b). He grabbed § 87(2)(b)'s shoulder area to stop him from going under the van. § 87(2)(b)'s arms were out in front of his body underneath the van. As PO Kennedy tried to grab § 87(2)(b)'s arm, he moved them around and away from his reach. PO Healy grabbed one of § 87(2)(b)'s arms and PO Kennedy grabbed the other. Prior to PO Healy's approach, PO Kennedy was not able to gain control of either of § 87(2)(b)'s arms. They pulled both behind § 87(2)(b)'s back to handcuff him. PO Kennedy did not punch § 87(2)(b) or strike him in any way on his left eye, testicles or any part of his body. PO Healy did not punch § 87(2)(b).

§ 87(2)(b)'s arrest report, prepared by PO Kennedy, notes that he refused to produce his hands to the officer (Board Review 02 and 03).

PO Healy stated that when he arrived, § 87(2)(b) was chest down with the right side of his body underneath a parked van and the other side on the curb. PO Kennedy was on top of him struggling to get his hands, which were underneath his body being held stiff and moving around. § 87(2)(b) did not offer other resistance. PO Kennedy punched § 87(2)(b) in his kidney area. PO Healy did not know how many times PO Kennedy punched § 87(2)(b). When PO Healy approached, he punched § 87(2)(b) in his body a few times. PO Healy could not recall where specifically he punched § 87(2)(b). He never punched his face, testicles or upper thigh. PO Healy never saw PO Kennedy strike his face. No additional force or strikes were used.

The command log entry lists § 87(2)(b)'s physical and mental condition as apparently normal (Board Review 12). The unusual occurrence report, prepared by Captain Johnny Orellana of Patrol Borough Bronx, notes that § 87(2)(b) refused to be rear handcuffed and became combative towards the officers. The officers struggled with him on the ground and he received a minor laceration above his left eye. § 87(2)(b) was interviewed and stated that he was thrown to the ground and punched by one officer. § 87(2)(b) said he resisted because he did nothing wrong (Board Review 13). § 87(2)(b)'s arrest photograph depicts a bleeding abrasion underneath his left eye, and a bandage on his eyebrow (Board Review 14).

Patrol Guide Procedure 203-11 authorizes an officer to use the minimum amount of force necessary to effect an arrest (Board Review 15).

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

Squad:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date